

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANT: CNX Gas Company LLC

DIVISION OF GAS AND OIL
DOCKET NO.: VGOB 06-1114-1789-01

HEARING DATE: January 16, 2007

RELIEF SOUGHT: CHANGE OF UNIT OPERATOR

UNIT: D-45 in the Oakwood Field

Buchanan County, Virginia

AMENDED PETITION FOR CHANGE OF UNIT OPERATOR

1. **Applicant and its counsel:** The Petitioner is **CNX Gas Company LLC**, 2481 John Nash Blvd., Bluefield, West Virginia 24701, 304.323.6500. Applicant's counsel is Mark A. Swartz, PO Box 517, Abingdon, VA 24212.

2. **Information required by 4 VAC 25-160-120.B:**

i. **Name and address of existing operator:**

GeoMet, Inc.
5336 Stadium Trace Parkway, Suite 206
Birmingham, AL 35244
Attention: Joseph L. Stephenson

ii. **Name and address of proposed new operator:**

CNX Gas Company LLC
2481 John Nash Blvd.
Bluefield, WV 24701
Attention: Leslie K. Arrington

iii. **Detailed statement of facts supporting removal of the existing operator:**

Applicant has filed a completed well work permit application, including without limitation, a consent to stimulation signed by the coal operator of the below drainage seams in the unit whereby the coal operator has authorized proposed operator (but not existing operator) to drill through and to stimulate coalbed methane wells within the unit in question.

As of the filing of this amended petition, Applicant believes that the existing unit operator has not filed a permit application. Existing operator has not obtained a consent to stimulate from the coal operator and cannot submit a complete well work permit application for the unit in question.



The Board has previously determined, when it implemented 4 VAC 25-160-120, that due diligence shall be required of its appointed operators in the pursuit of oil and gas development. Because the Board's appointed operator has not applied for a well work permit in this unit, has not obtained the required consent of the coal operator, and cannot file a complete well work permit application for the unit in question, the Board's operator is incapable of operating the said unit with due diligence. Hence, the Board should replace the existing operator who is not authorized by the consent of the coal operator to operate the unit in question with the proposed new unit operator who is so authorized.

It is reasonable to require diligence in pursuing and continuing gas operations for the benefit of owners and claimants in pooled units. Accordingly, it is not reasonable to appoint an operator who cannot drill, stimulate and produce a well(s) with due diligence.

iv. Identification of order to be amended:

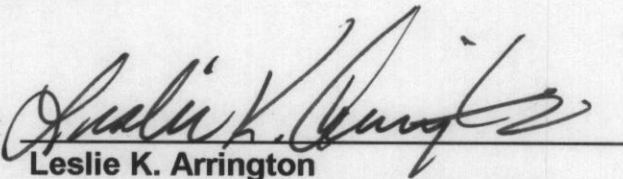
No order entered

3. Notice to be provided under § 45.1-361.19.B of the Virginia Code and 4 VAC 25-160-120.

4. **Attestation:** The foregoing application, to the best of my knowledge, information, and belief, is true and correct.

CNX Gas Company LLC
Applicant

By:



Leslie K. Arrington
Manager – Environmental Permitting
for CNX Gas Company LLC
2481 John Nash Blvd.
Bluefield, WV 24701
304.323.6500

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APPLICANT: CNX Gas Company LLC

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RELIEF SOUGHT: CHANGE OF UNIT OPERATOR

UNIT: D-45 in the Oakwood Field

Buchanan County, Virginia

NOTICE OF HEARING

HEARING DATE: January 16, 2007
PLACE: Southwest Virginia Higher Education Center
Campus of the Virginia Highlands Community College
Abingdon, Virginia
TIME: 9:00 AM

COMMONWEALTH OF VIRGINIA:

To: **GeoMet Operating Company, Inc.**

NOTICE IS GIVEN that this cause has been set for hearing and the taking of evidence before the Board at 9:00 AM, on January 16, 2007, at the Southwest Virginia Higher Education Center, Campus of the Virginia Highlands Community College, Abingdon, Virginia, and that notice will be published as required by law and the rules of the Board.

NOTICE IS FURTHER GIVEN that the matters, issues and questions to be addressed at the hearing noticed are those described in the attached Petition to Change Unit Operator.

NOTICE IS FURTHER GIVEN that you may attend this hearing, with or without an attorney, and offer evidence or state any comments you have. For further information or a copy of the application and exhibits, either contact the Virginia Gas and Oil Board, State Oil and Gas Inspector, Department of Mines, Minerals and Energy, Division of Gas and Oil, PO Box 1416, Abingdon, Virginia 24210, 276/676-5423 or the Applicant at the address shown below.

DATED: 12/13/06

CNX Gas Company LLC
Applicant

By: 

Leslie K. Arrington
Manager – Environmental Permitting
for CNX Gas Company LLC
2481 John Nash Blvd.
Bluefield, WV 24701
(304) 323-6500



BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANT: CNX Gas Company LLC

**DIVISION OF GAS AND OIL
DOCKET NO.: VGOB 06-1114-1789-01**

HEARING DATE: January 16, 2007

**RELIEF SOUGHT: OBJECTION TO GEOMET, INC.
AS DESIGNATED OPERATOR**

**UNIT: D-45 in Oakwood Field
Buchanan County, Virginia**

OBJECTION OF CNX GAS COMPANY LLC

1. **Applicant and its counsel:** Objecting party is **CNX Gas Company LLC**, 2481 John Nash Blvd., Bluefield, West Virginia 24701, (304) 323-6500. Applicant's counsel is Mark A. Swartz, PO Box 517, Abingdon, VA 24212.

2. **Objection:** CNX Gas Company LLC objects to the appointment of GeoMet, Inc. as designated operator for the above referenced CBM unit upon the following grounds:

- a. The Virginia Gas and Oil Board previously determined, when it affirmed the decision of the Director of the Division of Gas and Oil on appeal by GeoMet, Inc., by Order¹ dated September 19, 2006, that:
 - i. The coal lease between the predecessors in interest of LBR Holdings, LLC and Island Creek Coal Company "created a coal owner/operator when it leased coal rights to Island Creek;"²
 - ii. That Island Creek "has the protections of the statute including the right to consent or not consent to stimulation of coals under its ownership;"³
 - iii. The reservation in the coal lease of the right to develop other minerals, other than coal, did not satisfy the statutory requirement for consent to stimulate;⁴
 - iv. "Island Creek has not granted Geomet, Inc. consent to stimulate the coal seams;"⁵ and
 - v. LBR Holdings LLC has reserved no mining rights which would support a claim of status as a coal operator with a right to consent and/or withhold consent to stimulation.

¹ Copy attached as Exhibit A.

² Conclusion of Law c.

³ Conclusion of Law c.

⁴ Conclusion of Law c.

⁵ Finding of Fact 4.

- b. Mr. Ertell Whitt, LBR Holdings LLC engineer has testified in front of this Board under oath when asked to show us where the coal lease of LBR Holdings LLC's predecessor reserved to lessors a right to mine coal "I don't think that it does."⁶

3. **Information required by 4 VAC 25-160-120.B:**

- i. Name and address of existing operator:

GeoMet, Inc.
5336 Stadium Trace Parkway, Suite 206
Birmingham, AL 35244
Attention: Joseph L. Stephenson

- ii. Name and address of proposed new operator:

CNX Gas Company LLC
2481 John Nash Blvd.
Bluefield, WV 24701
Attention: Leslie K. Arrington

- iii. Detailed statement of facts supporting removal of the existing operator:

Applicant has filed a completed well work permit application, including without limitation, a consent to stimulation signed by the coal operator of the below drainage seams in the unit whereby the coal operator has authorized proposed operator (but not existing operator) to drill through and to stimulate coalbed methane wells within the unit in question. [OR] Applicant has been issued the followed permit(s) for CBM wells within the unit in question: D-45

Existing unit operator has not filed a permit application. [AND/OR] Existing operator has not obtained a consent to stimulate from the coal operator and cannot submit a complete well work permit application for the unit in question.

The Board has previously determined, when it implemented 4 VAC 25-160-120, that due diligence shall be required of its appointed operators in the pursuit of oil and gas development. Because the Board's appointed operator [strike any of the following phrases which may not be applicable] has not applied for a well work permit in this unit, has not obtained the required consent of the coal operator, and

⁶ See Exhibit B which is a portion of Mr. Whitt's recent testimony before this Board.

cannot file a complete well work permit application for the unit in question, the Board's operator is incapable of operating the said unit with due diligence. Hence, the Board should replace the existing operator who is not authorized by the consent of the coal operator to operate the unit in question with the proposed new unit operator who is so authorized.

It is reasonable to require diligence in pursuing and continuing gas operations for the benefit of owners and claimants in pooled units. Accordingly, it is not reasonable to appoint an operator who cannot drill, stimulate and produce a well(s) with due diligence.

iv. Identification of order to be amended:

Unit D-45, VGOB 06-1114-1789

4. Notice has been provided under § 45.1-361.19.B of the Virginia Code and 4 VAC 25-160-120.

8. **Attestation:** The foregoing application, to the best of my knowledge, information, and belief, is true and correct.

CNX Gas Company LLC

Applicant

By: 

Leslie K. Arrington

Manager – Environmental Permitting

for CNX Gas Company LLC

2481 John Nash Blvd.

Bluefield, WV 24701

(304) 323-6500

Exhibit A

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

DOCKET NO.
VGOB 06-0815-1712

IN RE:

Appeal of the Virginia Division of Gas and Oil Director's Decision IFFC 18606 dated July 15, 2006 (hereinafter the "Decision") in the matter of Island Creek Coal Company et al (including other Consol Energy coal interests), coal owner (Hereinafter "Island Creek"), vs. GeoMet Operating Company, Inc. (hereinafter "GeoMet"), Proposed Well Rogers Unit 198 CBM Unit B43 (hereinafter "Proposed Well").

FINDINGS AND ORDER

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") on the 15th day of August, 2006, upon GeoMet's Petition for Appeal of the Director's Decision IFFC 18606 dated July 15, 2006 which found and held that the permit for the Proposed Well could not be issued without a Consent to Stimulate the coal seams as required by § 45.1-361.29.F of the Virginia Gas and Oil Act of 1990, and that reservations in the coal lease do not suffice for that consent.

Tom Mullins, Esq. and Ben Street, Esq. appeared at the hearing as Counsel for GeoMet; Mark Swartz, Esq. Appeared for Island Creek; Sharon M. B. Pigeon, Assistant Attorney General, was present to advise the Board.

History of Proceedings

1. On May 27, 2005, GeoMet filed with the Virginia Department of Mines, Minerals and Energy, Division of Gas and Oil ("DGO"), its application for proposed operations named Rogers 198 – CBM Unit B43.
2. On February 24, 2006, DGO received a letter from Joseph L. Stephenson stating, in part, that GeoMet had made repeated attempts to obtain agreements with and consent to stimulate coals from Island Creek but had been unsuccessful. The letter further stated GeoMet's contention that the consent is not necessary due to reservation clauses in the original coal lease. The letter requested that the permit be issued without Island Creek consent.
3. In a letter dated March 10, 2006, The Director of the Division of Gas and Oil denied GeoMet's request for issuance of the permit. The letter informed GeoMet of its right to appeal to the Virginia Gas and Oil Board or request an informal fact finding conference under the Virginia Administrative Processes Act.

4. On March 16, 2006, DGO received a letter from Timothy E. Scott, Esq. as counsel for GeoMet requesting an informal fact finding conference

5. The Director of the Division of Gas and Oil ("Director") scheduled an Informal Fact Finding Conference (IFFC) for April 24, 2006. Notice was given to GeoMet, and Island Creek.

6. IFFC 18606 was convened at the time and place indicated in notice.

7. Because no agreement between GeoMet and Island Creek was obtained at the Conference, the Director issued his decision on July 14, 2006 under requirements of §45.1-361.35.I.

8. On June 22, 2006, GeoMet filed with the Virginia Gas and Oil Board, pursuant to § 45.1-361.36 of the Virginia Gas and Oil Act, its Petition for Appeal of all adverse findings included in the Director's Decision. The petition specifically appealed the following findings:

a. That GeoMet has not obtained consent to stimulate from the coal owners.

b. That GeoMet does not have the right, pursuant to the evidence presented, to stimulate the coal seams for the use of Unit B-43.

The Petition further states that:

c. The decision of the Director is arbitrary and capricious and without basis in fact or law and ignores the vested rights of GeoMet to stimulate the coal.

d. The denial of the permit is arbitrary, capricious and without basis in law or fact.

Findings of Fact

1. Island Creek Coal Company is a lessee and, under definitions in § 45.1-361.1 of the Virginia Gas and Oil Act, a Coal Owner of coals in the drilling unit to be served by the Proposed Well. Island Creek has paid minimum royalties in order to preserve the lease and their right to mine coal thereunder.

2. Lessor, LBR Holdings and predecessors, reserved the right to develop oil, gas and other minerals.

3. LBR Holdings, LLC leased rights to develop coalbed methane gas to Equitable Production Company who farmed out those rights to GeoMet.

4. Island Creek has not granted GeoMet consent to stimulate the coal seams.

5. There are no known mining plans or mining permits in the area of the Proposed Well.

Conclusions of Law

In considering the provisions of § 45.1-361.29.F(2), Code of Virginia, 1950 as amended, The Board finds:

a. The statutory language is very specific and direct in that every permit application for a coalbed methane gas well must include a "signed consent to stimulate".

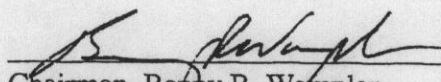
b. While the statute allows for the consent to be contained in a lease or other agreement or an instrument of title, the clear requirement is that the consent must be overtly granted.

c. The statutory requirement for consent to stimulate is not satisfied by lessor's reservation of the right to develop minerals other than coal. Lessor, in effect, created a coal owner/operator when it leased coal rights to Island Creek, and that coal owner/operator has the protections of the statute including the right to consent or not consent to stimulation of coals under its ownership.


d. The fact that the coal lease was executed prior to January 1, 1990 does not relieve any subsequent coalbed methane lessees from compliance with the consent to stimulate requirement. Relief under § 45.1-361.29.F.2(b) is predicated on the existence of "... a coalbed methane gas contract or a coalbed methane gas lease entered into prior to January 1, 1990, between the applicant and any coal operator ...". The coalbed methane lease was executed in February of 1999. No evidence of a coalbed methane lease or agreement prior to that time was presented.

Accordingly, this Board affirms the Director's decision IFFC number 18606, a copy of which is attached hereto and incorporated as part of this Order as though fully set out herein.

DONE AND EXECUTED this 19th day of September, 2006, by a majority of the Virginia Gas and Oil Board.


Chairman, Benny R. Wampler

DONE AND PERFORMED this 19th day of September, 2006, by an Order of this Board.


B. R. Wilson
Principal Executive to the Staff

Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF Washington)

Acknowledged on this 19th day of September, 2006, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

Diane J. Davis
Diane J. Davis
Notary Public

My Commission expires: 9/30/09

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 19th day of September, 2006, personally before me a notary public in and for the Commonwealth of Virginia, appeared B. R. Wilson, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

Diane J. Davis
Diane J. Davis
Notary Public

My commission expires: 9/30/09

Exhibit B

DIRECT EXAMINATION

QUESTIONS BY MR. MULLINS:

Q. Would you please state your full name, sir?

A. Ertel L. Whitt, Jr.

Q. And what do you do for a living, sir?

A. I'm a professional engineer.

Q. Who do you work for?

A. Various clients, but in this case LBR Holdings, LLC.

CROSS EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Mr. Whitt, could you...in this packet of stuff that we got today that we're dealing with, the coal lease, the first document. Could you maybe find that? Okay. The coal lease is between Lon Rogers and, I guess, that would have been his wife---.

A. Yes.

Q. ---and Island Creek Coal Company, right?

A. That's correct.

Q. Would those folks have been predecessors and interest of LBR Holding, the---?

A. Yes.

Q. ---folks that you now work for?

A. yes.

Q. Okay. And would you agree that this is a coal lease?

A. Yes.

Q. And that it gives...gave to Island Creek certain opportunities to mine coal?

A. That's correct.

Q. Okay. Would you agree with me that this language though that we've just read says that it gives "the sole and exclusive right and privilege of mining the coal to the Lessee"?

A. Yes.

Q. Were you here, and I know you were, but I want you to confirm on the record, were you here when Mr. Mullins was talking about the statutory definition of a coal owner or operator in terms of who is it that has right to consent?

A. Yes.

Q. Okay. Do you remember him saying that the statutory definition would include "Any person who has the right to operate or does operate a coal mine."?

TOM MULLINS: Objection. That calls for a legal conclusion based upon---.

Q. Do you recall him saying that?

TOM MULLINS: Excuse me. Let me get my objection---.

BENNY WAMPLER: I'm going to overrule the objection and let him answer the question.

TOM MULLINS: Okay.

Q. Do you recall him saying that?

A. Yes.

Q. Okay. Does it sound like the predecessors of your client gave up any rights to mine this coal or to operate a mine in this coal by the language of this lease?

TOM MULLINS: Objection. You can't take one phrase on page one of a...ever how many...fourteen or fifteen lease and ask what the rights vested into a coal operator are and who a Lessor are. That's an unfair question.

BENNY WAMPLER: I sustain that. You can ask it a different way.

Q. Show me in this lease limitations upon the exclusive right to mine that's granted on the first page that give...that reserves to the Lessors a right to mine coal.

A. I don't think that it does. But it also...the lease also provides that Island Creek operate in a legal manner. There is no permit or any license to mine.
